IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

MFA.No. 789 of 2002(A)

OPMV.383/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA
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APPELLANT/3RD RESPONDENT IN O.P(MV):

THE UNITED INDIA INSURANCE CO.LTD.,
REP. BY ITS ADMINISTRATIVE OFFICER,
MOTOR THIRD PARTY CLAIMS OFFICE,
VETTUKATTIL BUILDINGS, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENTS/PETITIONERS & RESPONDENTS 1 & 2 IN O.P(MV):
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1. **KUNHAYAN KUTTY, S/O. AMMED,**
   PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
   PAYYOLI POST, KOZHIKODE DISTRICT.

2. **MARIYAM, W/O. KUNHAYAN KUTTY,**
   PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
   PAYYOLI POST, KOZHIKODE DISTRICT.

3. **NAFEESA, D/O. KUNHAYAN KUTTY,**
   PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
   PAYYOLI POST, KOZHIKODE DISTRICT.

4. **AMMED, S/O. KUNHAYAN KUTTY,**
   PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
   PAYYOLI POST, KOZHIKODE DISTRICT.

5. **JAMEELA, D/O. KUNHAYAN KUTTY,**
   PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
   PAYYOLI POST, KOZHIKODE DISTRICT.

6. REMLA, D/O. KUNHAYAN KUTTY,
PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
PAYYOLI POST, KOZHIKODE DISTRICT.

7. SUBAIDA, D/O. KUNHAYAN KUTTY,
PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
PAYYOLI POST, KOZHIKODE DISTRICT.

8. ABDUL RAHEEM, S/O. KUNHAYAN KUTTY,
PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
PAYYOLI POST, KOZHIKODE DISTRICT.

9. SHAHIDA, D/O. KUNHAYAN KUTTY,
PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
PAYYOLI POST, KOZHIKODE DISTRICT.

10. SOUDHA, D/O. KUNLHAYAN KUTTY,
PARAPPURATH HOUSE, THURAYOOR AMSOM & DESOM,
PAYYOLI POST, KOZHIKODE DISTRICT.

11. MANAGING PARTNER, M/S. MILE VAHANAM
TRAVELS, POST SHORANUR, PALAKKAD DISTRICT.

12. RAMACHANDRAN, S/O. SUNDARAN,
K.C. KALAM HOUSE, KASABA AMSOM & DESOM,
PALLATHERI KASABA AMSOM POST,
PUTHUSSERY DESOM, PALAKKAD DISTRICT.

R1 TO R10 BY ADV. SRI.K.V.SOHAN
R11 & R12 BY ADV. SRI.P.GOPALAKRISHNA MENON
SMT.SREEJA SOHAN.K.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.789 OF 2002 ()

Dated this the 11th day of October, 2007

J U D G M E N T

KOSHY,J.

This appeal is filed by the Insurance company. A 26 year old man who was a mason by profession died in a motor accident. His father and mother, brothers and sisters filed an application for compensation alleging that accident occurred due to the negligence of the vehicle insured by the appellant Insurance company. Tribunal found the above point in favour of the claimants and also found that there was valid insurance at the time of accident. The total compensation awarded by the tribunal was Rs.4,53,500/-. The compensation awarded for loss of dependency was Rs.4,32,000/-. Insurance company contended that there was no evidence to show that the deceased was getting Rs.3,000/- as monthly income as assessed by the tribunal. According to the claimants as a mason, he was getting Rs.250 per day. However, that was not

proved. Considering the wage of a daily paid worker in Kerala, we are of the opinion that a man will get atleast Rs.150 per day and he may get minimum 26 days work in a month and assessment of income at Rs.3,000/- per month is not on the high side and no interference is also required in the multiplicand fixed by the tribunal in an appeal proceedings. After deducting $^{1}/_{3}^{rd}$ for personal expenses tribunal has taken Rs.2,000/- as the loss of dependency. It was argued by the counsel for the respondents that the future prospects also should be taken into account. But we are of the opinion that Rs.2,000/- was taken as the multiplicand by the tribunal needs no interference. Claimant also did not file any appeal.

2. So the mere question is with regard to the multiplier. Tribunal has taken 18 as the multiplier and age of the claimant is 26. His father was aged 59 years and mother was 54 years at the time of accident. There is no evidence to show that even though he has two younger sisters also, they were totally depending upon him and they were aged 20 and 25 years and of course they get some help from the brother.

Supreme Court held that in the case of death of an unmarried person, age of the claimants should be looked into. Considering the age of the mother, we fix 11 as the multiplier taking guidelines from the 2nd Schedule. Therefore compensation payable for the loss of dependency will be Rs.2,000 x 11 x 12 = 2,64,000/- instead of Rs.4,32,000/- awarded by the tribunal. Therefore the excess compensation amount of Rs.1,68,000/- has to be deducted. Hence total compensation to the claimants is Rs.2,85,500/-. The above amount alone is liable to be deposited by the Insurance company with rate of interest and proportionate costs as awarded by the tribunal after deducting the amount already deposited. Appeal is accordingly partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.789 OF 2002 (A)

J U D G M E N T

11th October, 2007